

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
COHERENT, INC.)
5100 Patrick Henry Drive)
P.O. Box 54980)
Santa Clara, California 95056-0980,)
)
Respondent)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Coherent, Inc. (Coherent) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations),² based on allegations that, on two separate occasions, on or about July 1, 1995 and on or about

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

² The alleged violations occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, 15 C.F.R. Parts 730-774 (1997), establish the procedures that apply to the matters set forth in this Order.

August 23, 1995, Coherent exported, from the United States to India, U.S.-origin plasma tubes for use in argon ion lasers without obtaining the required individual validated export licenses, in violation of Section 787.6 of the former Regulations;

BXA and Coherent having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:


FIRST, that a civil penalty of \$20,000 is assessed against Coherent, payment of which shall be made within 30 days of the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions. Pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1997)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, respondent will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

SECOND, that, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted to, or to be granted, to Coherent. Failure to make timely payment

of the civil penalty shall result in the denial of all of Coherent's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.

THIRD, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


E. Amanda DeBusk
Assistant Secretary
for Export Enforcement

Entered this 2nd day of February, 1998.

E566-4

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
COHERENT, INC.)
)
5100 Patrick Henry Drive)
)
P.O. Box 54980)
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Santa Clara, California 95056-0980,)
)
Respondent)

SETTLEMENT AGREEMENT

This Agreement is made by and between Coherent, Inc. (Coherent) and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act).²

Whereas, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), has

¹ The alleged violations occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, 15 C.F.R. Parts 730-774 (1997), establish the procedures that apply to the matters set forth in this Settlement Agreement.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

notified Coherent of its intention to initiate an administrative proceeding against it pursuant to the Act and the Regulations, based on allegations that, on two separate occasions, on or about July 1, 1995 and on or about August 23, 1995, Coherent exported, from the United States to India, U.S.-origin plasma tubes for use in argon ion lasers without obtaining the required individual validated export licenses, in violation of Section 787.6 of the former Regulations;

Whereas, Coherent has reviewed the proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement and the proposed Order; it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

Whereas, Coherent neither admits nor denies the allegations contained in the proposed Charging Letter;

Whereas, Coherent wishes to settle and dispose of all matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

Whereas, Coherent agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

Now Therefore, Coherent and BXA agree as follows:

1. BXA has jurisdiction over Coherent, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.

2. BXA and Coherent agree that the following sanction shall be imposed against Coherent in complete settlement of all violations of the Act and the former Regulations set forth in the proposed Charging Letter:

- a. Coherent shall be assessed a civil penalty of \$20,000, which shall be paid within 30 days of the date of entry of an appropriate Order.
- b. As authorized by Section 11(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted to, or to be granted, to Coherent. Failure to make timely payment of the civil penalty shall result in the denial of all of Coherent's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.

3. Coherent agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an administrative hearing

regarding the allegations in the proposed Charging Letter; (b) to request a refund of the civil penalty imposed pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any administrative proceeding against Coherent in connection with any violation of the Act or the former Regulations arising out of the transactions identified in the proposed Charging Letter.

5. Coherent understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.

6. BXA and Coherent agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and Coherent agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.


7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement

Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

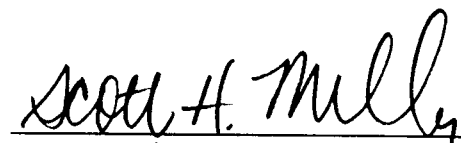
BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

COHERENT, INC.



Mark D. Menefee
Acting Director
Office of Export Enforcement

Date: 1/21/98



Scott Miller
Vice President and
General Counsel
Coherent, Inc.

Date: January 5, 1998



ES66-9

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Coherent, Inc.
5100 Patrick Henry Drive
P.O. Box 54980
Santa Clara, California 95056-0980

Attention: Henry E. Gauthier
President & Chief Operating Officer

Dear Mr. Gauthier:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, Coherent, Inc. (Coherent) has violated the Export Administration Regulations (current version codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act).²

Facts constituting violations:

CHARGES 1-2

On March 28, 1995, BXA notified Coherent, pursuant to the provisions of Section 778.3 of the former Regulations, that an individual validated export license or reexport authorization was required for all shipments of ion laser systems to the Department of Atomic Energy in India. On or about July 1, 1995 and on or

¹ The alleged violations occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, 15 C.F.R. Parts 730-774 (1997), establish the procedures that apply to the matters set forth in this charging letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).



about August 23, 1995, Coherent exported, from the United States to the Department of Atomic Energy in India, U.S.-origin plasma tubes for use in argon ion lasers without the required validated export licenses. BXA alleges that, by exporting U.S.-origin commodities, on two separate occasions, to any person or destination or for any use in violation of or contrary to the terms of the Act, or any regulation, order, or license issued thereunder, Coherent committed two violations of Section 787.6 of the former Regulations.

Accordingly, Coherent is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Coherent fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

Coherent is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Coherent's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Coherent's answer should be served on BXA at the address set forth

in Section 766.5(b), adding "**ATTENTION: Thomas C. Barbour, Esq.**" below the address. Mr. Barbour may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosure

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE
February 2, 1998
www.bxa.doc.gov

CONTACTS: Susan Hofer
Eugene Cottilli
202-482-2721

**\$20,000 PENALTY IMPOSED ON SANTA CLARA COMPANY
TO SETTLE CHARGES FOR PLASMA TUBE EXPORTS**

WASHINGTON - The Commerce Department's Bureau of Export Administration (BXA) today imposed the maximum civil penalty allowed under its regulations, \$20,000, on Coherent, Inc. (Coherent) of Santa Clara, California for allegedly violating the Export Administration Regulations (EAR). F. Amanda DeBusk, assistant secretary for Export Enforcement, announced.

The Department alleged that, on July 1, 1995, and August 23, 1995, Coherent exported U.S. origin plasma tubes for use in argon ion lasers to the Department of Atomic Energy in India without the required validated export licenses. These alleged exports followed the March 28, 1995 issuance of a BXA "Is Informed Letter" to Coherent under regulations that implement the Enhanced Proliferation Control Initiative (EPCI) advising that an individual export license or reexport authorization was required for the export of ion laser systems to the Department of Atomic Energy in India. The investigation was conducted by the Office of Export Enforcement's San Jose Field Office.

The notification to companies of potential "entities of concern" through an "Is Informed Letter" arises from an initiative begun in 1990 when President Bush called for a redoubling of our efforts to stem the spread of missile technology as well as nuclear, chemical and biological weapons. Under EPCI the Commerce Department can notify a company that a license is required for exports and reexports of any goods and technology to specified end users where there is an unacceptable risk of use in or diversion to activities related to nuclear, chemical or biological weapons or missile proliferation.

The Bureau of Export Administration controls and licenses exports and reexports of dual-use commodities, technology and software for reasons of national security, foreign policy, nonproliferation, and short supply.